

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-152
Act of 1996)	
)	
Telemessaging, Electronic Publishing,)	
and Alarm Monitoring Services)	

BELLSOUTH COMMENTS

BellSouth Corporation, for itself and on behalf of its affiliated companies ("BellSouth"), submits these Comments in support of Southwestern Bell Telephone Company's ("SWBT") Petition for Reconsideration or Clarification ("Petition") of the Commission's *Second Report and Order*¹ in this proceeding.

SWBT asks the Commission to revise the enumeration of factors the Commission indicated it would deem relevant to an assessment of whether a BOC becomes engaged in the provision of alarm monitoring service when the BOC enters a sales agency or marketing arrangement with an alarm monitoring service provider. Specifically, SWBT asserts first and foremost that the Commission need not and should not take into account whether the terms and conditions of the arrangement would be made available to other alarm monitoring providers on a nondiscriminatory basis. At a minimum, SWBT asserts, the Commission should affirm that the nondiscriminatory availability of such an arrangement would not be an absolute or necessarily

¹ *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, FCC 97-101, *Second Report and Order* (rel'd. March 25, 1997).

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controlling factor in the Commission's consideration of the arrangement. BellSouth supports SWBT's request and the reasons advanced therefor.

Section 275(a)² of the Act³ prohibits nongrandfathered BOCs and their affiliates from "engag[ing] in the provision of alarm monitoring services" before February 8, 2002. When a BOC is permitted to provide alarm monitoring services, Section 275(b)⁴ imposes a nondiscrimination standard on the BOC with respect to network services it provides to its alarm monitoring operations. Neither of these provisions establishes any nondiscrimination obligation arising from a BOC's relationship with a *non-affiliated* alarm monitoring provider.⁵

Nor does the Commission's *Order* explain how the availability or lack of availability of nondiscriminatory arrangements would be relevant to consideration of whether a BOC is providing alarm monitoring service. Indeed, in contrast with other types of factors the Commission indicated it would deem relevant, such as the nature of the compensation structure or the extent of any "financial stake" in the success of the alarm monitoring provider, the availability or nonavailability of nondiscriminatory terms provides no insight as to the depth of the BOC's involvement with the alarm monitoring company. Instead, such a factor reveals only whether a given arrangement is available to other alarm monitoring service providers, regardless of whether the arrangement itself otherwise does or does not constitute "provision." Accordingly,

² 47 U.S.C. § 275(a).

³ Communications Act of 1934, as amended, 47 U.S.C., §§ 151 *et seq.* ("the Act").

⁴ 47 U.S.C. § 275(b).

⁵ Of course, BOCs would remain subject to the nondiscrimination standard of Section 202, 47 U.S.C. § 202, with respect to services provided under Title II regulation. Sales agency and marketing arrangements, however, are not Title II offerings.

consideration of such a factor adds nothing to an assessment of whether a BOC is in fact engaged in provision of alarm monitoring services.

To the extent the Commission's inclusion of a nondiscrimination factor in its analysis is based upon a presumed correlation between a BOC's willingness to enter an arrangement with few or many alarm monitoring providers and the degree to which the BOC is "intertwined" with the alarm company, such a presumption is misplaced. BOCs have many legitimate reasons for desiring to be selective in their business relationships with alarm service providers -- reasons that have no bearing on, and that are unaffected by, the terms of the relationship. For example, with continuing growth of competition in all markets, BellSouth, like all other carriers, must work harder than ever to ensure that its name and reputation are associated with high quality products and services. Further, sales or marketing of a nonaffiliated provider's products or services is viewed by customers as an endorsement of those services. With a service such as alarm monitoring where a service failure could lead to catastrophic loss for customers, BellSouth has a legitimate need and desire to protect itself both from loss of goodwill and from legal liability. The best way for BellSouth to achieve such protection is to be highly selective in its choice of alarm monitoring services it is willing to sell or market. The Commission should not undermine BellSouth's ability to protect itself in this manner by superimposing a nondiscrimination obligation on prudent business decision-making processes when such an obligation is clearly not required by the Act.

Recognition of a BOC's right to be selective in its choice of alarm monitoring providers with whom to enter sales agency or marketing relationships is also consistent with analogous

provisions of Section 274(c)(2)(C)⁶ of the Act and the Commission's interpretation of those provisions. Section 274 establishes a general prohibition on BOCs' direct provision of electronic publishing services. Section 274 (c)(2)(C), however, expressly permits BOCs to enter electronic publishing joint ventures, including through the holding of equity interests and gross revenue rights, on a nonexclusive basis. In interpreting this standard, the Commission has held that it "does not ... preclude a BOC from exercising its business judgment regarding its joint venture partners ... [and] does not require a BOC or BOC affiliate to participate in more than one electronic publishing joint venture."⁷

Section 274(c)(2)(C) obviously permits relationships with electronic publishers that would constitute impermissible "providing" of alarm monitoring service under Section 275(a). Even with that significantly greater "intertwining" of interests permitted under Section 274(c), however, Congress saw no need to attach a nondiscrimination obligation to the permitted relationship. Where substantially less "intertwining" is permitted under Section 275(a), there is correspondingly less reason to impose a nondiscrimination obligation on BOCs' exercise of business judgment in the selection of alarm monitoring providers with whom to enter sales agency or marketing relationships. Consistent with the approach of Congress under Section 274(c)(2)(C), the Commission should revise its approach as suggested by SWBT to consider, at most, the non-exclusivity of the sales agency or marketing arrangement, not the nondiscriminatory availability of its terms and conditions.

⁶ 47 U.S.C. § 274(c)(2)(C).

⁷ *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, FCC 97-35, *First Report and Order* (rel'd Feb. 7, 1997), at ¶ 179, 180.

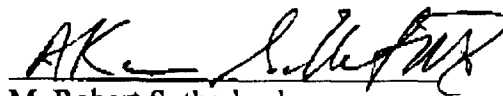
Finally, if the Commission nonetheless resolves to maintain nondiscrimination as a factor in its assessment of whether a given sales agency or marketing arrangement constitutes provision of alarm monitoring service, BellSouth concurs with SWBT that nondiscrimination should not be made an absolute or necessarily controlling factor. As noted above, a BOC has many legitimate reasons for being selective about the alarm monitoring provider(s) with which the BOC would be willing to enter sales agency or marketing relationships. The Commission clearly should not subjugate these justifiable concerns to an artificial nondiscrimination standard. Rather, the Commission must recognize that unique sales agency or marketing arrangements may exist without constituting provision of alarm monitoring service.

CONCLUSION

For the reasons states herein, BellSouth urges the Commission to reconsider its *Second Report and Order* in accordance with SWBT's Petition.

Respectfully submitted,

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DATE: June 4, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of June, 1997 served the following party to this action with a copy of the foregoing **BELLSOUTH COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the party listed below.


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